

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

LISA SUTER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 06-4032-CV-W-HFS
	)	
STATE OF MISSOURI,	)	
	)	
Defendant.	)	

**MEMORANDUM TO COUNSEL**

This will confirm that, subject to cancellation depending upon developments, I anticipate a preliminary injunction hearing on Monday, August 14, with availability of time on the 15<sup>th</sup> . Because of family health responsibilities I do not travel and am generally available at the Kansas City courthouse from about 8:45 a.m. to 3:15 p.m.

It may be useful to share several citations that may impact on the merits. There is significant and perhaps controlling litigation arising in Nebraska and involving comparison of educational programs for male and female inmates. Klinger v. Department of Corrections, 31 F.3d 727 (8<sup>th</sup> Cir. 1994) (Equal Protection); 107 F.3d 609 (8<sup>th</sup> Cir. 1997) (Title IX). In a Fifth Circuit case the Klinger litigation was cited when male inmates claimed discrimination in facilities (cell availability and air conditioning). Yates v. Stalder, 217 F.3d 332 (5<sup>th</sup> Cir. 2000). The Yates case was remanded for further development of a record, and was subsequently ruled for the prison administration.

Dissenting judges in the Eighth Circuit have been troubled by an impression that the Circuit has been following a bright-line test that would never permit comparison of prison facilities housing men and women, despite disclaimers. Keevan v. Smith, 100 F.3d 644, 652 (8<sup>th</sup> Cir. 1996).

I have not yet found a case invalidating dissimilar prison facilities for men and women. Limited research discloses only Yates for a consideration of such claims. There thus appears to be some novelty, and perhaps difficulty in the issues presented. We shall see. As stated before, early briefing is invited.

/s/ Howard F. Sachs  
HOWARD F. SACHS  
UNITED STATES DISTRICT JUDGE

July 31, 2006

Kansas City, Missouri